

Message Text

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TO ALL AMERICAN REPUBLIC DIPLOMATIC POSTS

UNCLAS STATE 024007

E.O. 11652: N/A

TAGS: EINV

SUBJECT:CALVO CLAUSE AND RELATED PROVISIONS

1. DEPARTMENT IS CONDUCTING STUDY OF CONSTITUTION AND LAWS OF LATIN AMERICAN AND CARIBBEAN COUNTRIES THAT HAVE THE EFFECT OF RESTRICTING FOREIGN INVESTORS' RIGHT TO SEEK HOME-GOVERNMENT ASSISTANCE IN CASE OF INVESTMENT DISPUTES AND/OR PROVIDE FOR EXCLUSIVE JURISDICTION OF LOCAL COURTS AND LOCAL LAW OVER SUCH MATTERS. (SUCH PROVISIONS ARE OFTEN TERMED "CALVO CLAUSES.")

2. ARE THERE ANY SUCH PROVISIONS IN THE CONSTITUTION OR STATUTES OF HOST COUNTRY? ARE THERE MORE GENERAL PROVISIONS THAT LIMIT TREATMENT OF FOREIGN NATIONALS TO THAT PROVIDED FOR DOMESTIC INVESTORS? (SUCH CATCH-ALL PROVISIONS COULD BE INCONSISTENT WITH TRADITIONAL RULES OF CONFLICT-OF-LAWS AS WELL AS SPECIAL LEGISLATION APPLYING ONLY TO FOREIGN INVESTORS.) IS THIRD-PARTY ARBITRATION OR SETTLEMENT IN FOREIGN COURTS PRECLUDED EVEN WHEN PARTIES HAVE PREVIOUSLY STIPULATED DISPUTE - RESOLUTION PROCEDURES?

3. ANY FURTHER INFORMATION OR COMMENTS WILL BE WELCOMED.

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